



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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In Reply Refer To:
FWS/R2/ES/02ETCC00-2015-F-0317.

March 18, 2019

James Martin
Chief, Gas Branch 3
Division of Gas – Environment and Engineering
Federal Energy Regulatory Commission
Washington, DC 20426

Dear Mr. Martin:

This letter acknowledges the U.S. Fish and Wildlife Service's (Service) receipt of the Federal Energy Regulatory Commission (FERC) letter received February 15, 2019, requesting initiation of formal section 7 consultation under the Endangered Species Act of 1973, as amended. Annova LNG Brownsville Project (Project), requested authorization to site, construct, and operate a natural gas liquefaction and liquefied natural gas (LNG) export facility on 731 acres of land along the Brownsville Ship Channel (BSC) leased from the Brownsville Navigation District (BND) in Cameron County, Texas. The Project would receive natural gas from a third-party pipeline, create and store LNG, and load up to 6.95 million tonnes per annum of LNG onto carriers for export to overseas markets.

As detailed in the Biological Assessment, FERC has identified 11 federally listed species potentially present within the Project area. FERC has determined a “*no effect*” on two federally listed plant species (South Texas ambrosia and Texas ayenia) and one proposed to be federally listed bird species (eastern black rail). The Service does not provide concurrence for “*no effect*” determination, but by making a determination, we believe your agency complied with section 7 (a) (2) of the Endangered Species Act of 1972, as amended.

In addition, FERC has determined that the Project is unlikely to cause a trend toward federal listing for the listing candidate red-crowned parrot, and also would not adversely modify designated critical habitat for piping plover. The Service concurs with your determination.

FERC has determined a “*may affect, not likely to adversely affect*” status for Florida manatee, northern aplomado falcon, piping plover, red knot, and whooping crane. Based on information in the Biological Assessment and knowledge of the site, the Service concurs with these determinations. FERC determined that the Project “*may affect, likely to adversely affect*” two

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federally listed mammal species (ocelot and Gulf Coast jaguarundi) and the Service concurs with the determination.

The northern aplomado falcon in South Texas is covered for take under the Endangered Species Act by a 99-year Safe Harbor Agreement and associated 10 (a)1B permit that allows development to take aplomados in the area around the Port of Brownsville. However, we encourage aplomado habitat conservation measures across the landscape to offset cumulative impacts over time. We also request that per the Safe Harbor Agreement, you alert us to aplomado nests in the project area and any eggs and young, so these can be re-located, if needed.

Additional information needed for the biological assessment (BA) includes cumulative landscape level effects to the ocelot and jaguarundi. The Service requests an analysis of the cumulative impacts of the 36-inch diameter natural gas supply lateral pipeline. Please confirm plans to directionally drill the pipeline in the same manner as the Valley Crossing Pipeline between State Highway 4 and the Project to avoid impacts to the loma. Additional details of the approximately 55 acres of temporarily impacted habitat should be provided including habitat type and restoration methodologies. We recommend vegetative restoration be monitored for five years to increase the chances of success or until there is 80% of native vegetative coverage.

A new 138-kV transmission line that is 15 miles long will traverse loma habitat that is to be protected by a perpetual conservation easement (Loma de la Jauja) in development of the access road. The Service recommends moving the transmission line north to avoid impacting ocelot habitat in the proposed perpetual conservation easement. Also, please include acres of habitat by type to be permanently and temporarily impacted by this line.

A new potable water pipeline, about 5.9 miles long, has the same alignment as the natural gas lateral between State Highway 4 and the Project and will go through the perpetual conservation easement (Loma de la Jauja) with BND that is to protect cat habitat in exchange for use of the Lower Rio Grande Valley National Wildlife Refuge access road right of way. The Service recommends either the potable pipeline be directionally drilled for the length of the loma or move the line to the north to avoid ocelot habitat impacts to the proposed perpetual conservation easement. Also, please include acres of habitat by type to be permanently and temporarily impacted by this line.

The Service also requests copies of signed agreements between Brownsville Navigation District (BND) and Annova for the following ocelot/jaguarundi conservation easements:

- Wildlife corridor on the west side of the Project site (Loma del Divisadero), where existing dense thornshrub and other habitats would be avoided and preserved, and is proposing to protect the wildlife corridor with a conservation easement (194.72 acres),
- Extend the duration of the existing Redhead Ridge Conservation Easement (44.38 acres), a BND-owned conservation easement for ocelots between BND and the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) located on the north side of the Brownsville Ship Channel (Puerta de Trancas Loma),

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- An ocelot conservation easement (between 189 to 214.37 acres) of (Loma de la Jauja) if Alternative Road #2 ROW access permit is granted by the LRGVNWR
- An ocelot conservation easement along the proposed road between Loma de la Jauja and Loma del Divisadero to have complete connectivity from the Rio Grande river to Bahia Grande; the Service discussed with Annova during a meeting on 3/17/19 of pursuing this conservation easement with BND.
- Acreage of voluntary offsite conservation agreement(s) within the Ocelot Coastal Wildlife Corridor to offset ocelot habitat loss.

When the Service receives an updated BA with the above information, we can initiate formal Section 7 consultation and complete a Biological Opinion for the ocelot. Please see the attached best management practices (BMPs) for ocelot/jaguarundi, and aplomado falcons to include in your project description as possible.

As a reminder, the Endangered Species Act requires that after initiation of formal consultation, the federal action agency may not make any irreversible or irretrievable commitment of resources that limits future options. This practice insures agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence or endangered or threatened species or destroying or modifying their critical habitats.

If you have questions or concerns about this consultation or the consultation process, please contact Dawn Gardiner at (361) 225-7310 or Ernesto Reyes at (956) 784-7560.

Sincerely,



for Charles Ardizzone
Field Supervisor

cc:

Field Supervisor, U.S. Fish and Wildlife Service, Corpus Christi, TX
Bryan Winton, Alamo, TX
Pat Clements, Corpus Christi, TX

Attachment:

Best Management Practices (BMPs)

The following BMPs will be implemented as a part of these actions to avoid and/or minimize impacts to the federally-listed ocelot and jaguarundi.

General BMPs:

1. Prior to any operation activities, a kick-off meeting will be scheduled. One of the primary purposes will be to discuss the BMPs and education training for all on-site workers.
2. Individual federally listed animals found in the project area will not be harassed and will be allowed to leave on their own volition. An individual, with the authority to stop construction activities, will be on-site during operation activities, and will halt all activities immediately upon report of an ocelot or jaguarundi sighting. Contact the Service immediately at (956) 784-7560 if a federally-listed animal is seen in the project vicinity during normal business hours. After hours, please call (956) 784-7520 (Refuge Dispatch).
3. During helicopter activities, an environmental monitor, with authority to temporarily suspend operation at any time the appropriate BMPs are not being properly implemented, will be present on site. Duties of the monitor will include ensuring that activities stay within designated project areas, evaluating the response of individuals that come near the project site, and implementing the appropriate BMP.
4. If new or improved access is needed that will clear thornscrub brush, plans will be coordinated with the Service.
5. Tree and brush removal should be minimized and permanent loss will be restored with native vegetation.
6. Dispose of all food related trash items such as wrappers, cans, bottles, and food scraps in closed containers and remove daily from the project site to eliminate attraction of predators.
7. All equipment, materials, and vehicles will be staged in designated areas that are currently cleared and covered with aggregate.
8. Operation activities will be conducted only during daylight hours to avoid noise and lighting issues at night. Noise levels should be minimized.
9. Vehicle traffic associated with the project will remain on established roads and reduce speeds to the maximum extent practicable.

10. The project management plan *will* provide for a report *describing* the implementation of the BMPs and their effectiveness. All personnel involved with the on-the-ground or maintenance for the proposed action will receive training in the affected species, the agreed upon BMPs, and the role of the construction monitor.

Best Management Practices for the Northern Aplomado Falcon

This document describes some Best Management Practices (BMPs) for the northern aplomado falcon (*Falco femoralis septentrionalis*) (aplomado falcon) recommended by the Texas Coastal Ecological Service Field Office (TCESFO) that may be applicable to various types of projects. Best Management Practices (BMPs) are recommended measures that if implemented as part of the proposed action, would, to the extent practicable, avoid, minimize, and mitigate for adverse effects of that proposed action on the aplomado falcon. However, even with these BMPs in place, there may be adverse effects that may remain and require initiation of formal consultation. The inclusion of BMPs into the project proposal would streamline any formal consultation or conference that might still be required. Further technical assistance on analysis of effects is available by contacting the appropriate Ecological Services Field Office (ESFO).

Project Planning and Documentation

- Identification of suitable habitats and pre-activity surveys for the aplomado falcon should be conducted during project planning, and typically include systematic observations in suitable habitat for territorial aplomado falcons and/or nest sites if operations are conducted between March-August; coordination with the Peregrine Fund and Laguna Atascosa is recommended before helicopter operations take place. Pre-activity surveys should be conducted by qualified, permitted individuals in accordance with protocols that are recognized by the U.S. Fish and Wildlife Service's (Service) and/or Arizona Game and Fish Department, New Mexico Department of Game and Fish, or Texas Parks and Wildlife Department. Currently, Service survey protocol guidance is contained in the 2003 Interim Survey Methodology for the Northern Aplomado Falcon (*Falco femoralis septentrionalis*) in Desert Grasslands.
- All personnel involved with the on-the-ground and aerial operation or maintenance for the proposed action will receive training in the subspecies, the agreed upon BMPs, and the role of the operation monitor.
- During aerial or maintenance activities in or within .5 miles of northern aplomado falcon habitat (or such distance that noise, light, or other effects reach the habitat), a operation monitor with authority to halt operations at any time the appropriate BMPs are not being properly implemented as agreed to will be present on-site.
- Measures to reduce adverse environmental impacts to aplomado falcons should be incorporated into projects, in accordance with agency plans, permits, and regulations.
- New proposed actions should undergo environmental review during which potential affects to the aplomado falcon would be considered.
- If an active aplomado falcon territory is discovered during the planning phase of a proposed operation, a different alternative should be considered to minimize disturbance..